IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/10/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION No.2899 OF 2000

Kalimuthu ... Petitioner

-Vs-

1.Kandasamy Gounder
2.Rukmani Ammal ... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure for the relief as stated therein.

For petitioner : Mr.V.Natarajan

For 1st Respondent : Mr.A.V.Arun

For R.2 : No Appearance

:O R D E R

The above civil revision petition has been filed under Section 115 of the Code of Civil Procedure praying to set aside the fair and decretal order dated 6.7.2000 made in E.P.No.110 of 1998 in O.S.No.992 of 1996 by the Court of I Additional District Munsif, Dindigul.

2. Tracing the history of the above civil revision petition coming to be filed by the petitioner, it comes to be known that the petitioner is the assignee of the decree by the decree holder as per the assignment dated 19.1.1998 and the decree assigned was an ex-parte one dated 20.2.1997.

3. It further comes to be known from the arguments of the learned counsel appearing on behalf of the petitioner that based on the said assignment, the petitioner, assignee of the decree, has filed the E.P.No.110 of 1998 under Order 21 Rule 16 and 66 praying to recognise the petitioner as a decree holder and permit him to sell the suit property and since the said petition was dismissed by the Court below, the petitioner has come forward to file the above civil revision petition.

4. During arguments, the learned counsel for the petitioner would submit that the Court below has dismissed the application on ground that an application to set aside the ex-parte decree along with another application

to condone the delay was pending before the execution Court and that the execution petition has been filed only by the assignee whereas according to Order 21 Rule 16 covering the subject, when the decree is in favour of two or more persons, only one decreeholder could assign his right in the decree in favour of another decreeholder as it has been wrongly interpreted on the part of the lower Court much against the letter and spirit of law as declared under Order 21 Rule 16 CPC, which has also been wrongly given by the execution court as under Order 29 Rule 16 CPC. On such arguments, the learned counsel for the petitioner would pray for setting aside the order of the lower Court.

5. On the part of the learned counsel for the first respondent, he would not only sail along with the order of the lower Court but also cite two judgments reported in (1) AIR 1924 Bombay 426 (VITHAL LAXMANNAIK MALGAVKAR vs. MAHADEV SRAGHUNATH KONDKAR) and (2) AIR (39) 1952 Madhya Bharat 9 (JAGANNATH vs. TAKHAT SINGH AND OTHERS).

6. So far as the first judgment above is concerned, it has been held by a Division Bench of the Bombay High Court decades back that `as they (subsequent purchasers) were not parties to a proceeding in the lower Court they cannot appeal from the decree or order passed, when there had been no assignment in their favour and the procedure under O.21 R.16 was not followed."

7. This proposition as held by the Divison Bench of yesteryears (this judgment was delivered on 22.1.1924) is no longer a good law particularly in view of the fact that the CPC has undergone many amendments and therefore no explanation comes forth from the side of the first respondent whether adhering to the same provision of law as it is today, the above division bench had passed the judgment in the manner aforementioned.

8. Coming to the second judgment cited above, it has been held by a learned single Judge of the Gwalior Bench of the Madhya Bharath High Court way-back in 1951 holding that `the assignee of a decree under an oral assignment has no locus standi at all to apply for execution of a decree.' This judgment has absolutely no relevance or meaning in the context of the fact situation of this case since it is not at all the case of the first respondent that the assignment of the petitioner was an oral assignment nor has it been relied on by the trial Court for dismissing the execution petition. Absolutely, this judgment has no relevance to the context of the facts and circumstances of the case in hand and therefore both the above judgments cited do not become applicable to the fact situation of the case.

9. Coming to the lower Court order, without even reading the provision of law and wrongly quoting the provision of law as Order 29 Rule 16, the lower Court has blabbered something which is not expected of a responsible Presiding Officer who is heading the Court to decide matters in accordance with law. First of all, the lower Court has no business to make a mention of the petitions filed to set aside the ex-parte decree and to condone the delay before the Court which has no relevance or bearing on deciding the execution petition filed by the petitioner. If at all those petitions are pending, independently a decision should have been made on the part of the lower Court based on the merits of the execution petition processing the same in the right

angle since the accepted norm is that the execution court cannot go beyond the decree in whatever manner it come to be passed.
10. Secondly, the lower Court has no business to cite those petitions to give a false impression as though if such petitions are pending, the execution petition filed either by the decree-holder or by a nominee cannot be carried on nor the decree be executed when there is no law to that effect and therefore irrelevant materials have been brought into the subject matter out of context by the lower Court which would only go to prove that the lower Court does not even know as to what are the relevant materials that could be taken into consideration at the time of deciding the matters of such importance, wasting not only the time of the lower Court but also of this Court in giving expression to the position of law.

11. Thirdly, the lower Court seems to be under miserable misconception of law to the effect that under Order 21 Rule 16 CPC where particularly two or more decree holders are present, only from among themselves the assignment could be made whereas no such expressions have been made under the said provision of law which comes to be seen on a plain reading of the rule and therefore it is clear that without even having a cursory glance into the provision of law concerned, the lower Court has blabbered something, going out of the way resulting in the most erroneous order to be passed which is under challenge in the above civil revision petition.

12. The fair and decretal order passed by the lower Court in dismissing the execution petition filed by the petitioner/assignee is not only most unfortunate but undesirable as well on the part of the lower Court to pass such an order, needless to mention that it is erroneous in law and on facts and it becomes only liable to be set aside and hence the following order:
In result,
(i)the above civil revision petition succeeds and the same is allowed in full with costs throughout.
(ii)The order dated 6.7.2000 made in E.P.No.110 of 1998 in O.S.No.992 of 1996 by the Court of I Additional District Munsif, Dindugal is hereby set aside.
(iii) In view of the long pending nature of the execution petition right from the year 1998, yet another direction is issued to the lower Court to take up the E.P.No.110 of 1998 in O.S.No.992 of 1996 emergently, out of turn expediting the proceedings so as to deliver the goods within three months from the date of receipt of this order and to report compliance to this Court.

Index: Yes
Internet: Yes

Rao

To

The I Additional District Munsif,
Dindigul.